

§ 41. “Person” defined in Walsh-Healey provisions

Whenever used in sections 35 to 45 of this title, the word “person” includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(June 30, 1936, ch. 881, § 7, 49 Stat. 2039; Pub. L. 95-598, title III, § 326, Nov. 6, 1978, 92 Stat. 2679.)

AMENDMENTS

1978—Pub. L. 95-598 substituted “trustees in cases under title 11” for “trustees in bankruptcy”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43a of this title; title 25 section 450j.

§ 42. Effect of Walsh-Healey provisions on other laws

The provisions of sections 35 to 45 of this title shall not be construed to modify or amend Title III of the act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved May 3, 1933 (commonly known as the Buy American Act) [41 U.S.C. 10a et seq.], nor shall the provisions of sections 35 to 45 of this title be construed to modify or amend sections 3141-3144, 3146, and 3147 of title 40, nor the labor provisions of Title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of sections 35 to 45 of this title be construed to modify or amend chapter 307 and section 4162¹ of title 18.

(June 30, 1936, ch. 881, § 8, 49 Stat. 2039.)

REFERENCES IN TEXT

The Buy American Act, referred to in text, is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which is classified generally to sections 10a, 10b, and 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

The National Industrial Recovery Act, referred to in text, is act June 16, 1933, ch. 90, 48 Stat. 195. Title II of the National Industrial Recovery Act was classified principally to subchapter I (§ 401 et seq.) of chapter 8 of former Title 40, Public Buildings, Property, and Works, and was terminated June 30, 1943, by act June 27, 1942, ch. 450, § 1, 56 Stat. 410. Provisions of title II of the Act which were classified to former Title 40 were repealed by section 6(b) of Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1304. For complete classification of this Act to the Code, see Tables.

Section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935, referred to in text, is act Apr. 8, 1935, ch. 48, § 7, 49 Stat. 115, which is not classified to the Code.

Section 4162 of title 18, referred to in text, was repealed by Pub. L. 98-473, title II, § 218(a)(4), Oct. 12, 1984, 98 Stat. 2027.)

¹ See References in Text note below.

CODIFICATION

“Sections 3141-3144, 3146, and 3147 of title 40” substituted in text for “the Act entitled ‘An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes’, approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time” on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

“Chapter 307 and section 4162 of title 18” substituted for “the Act entitled ‘An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes’, approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934” on authority of act June 25, 1948, ch. 645, 62 Stat. 683, the first section of which enacted Title 18, Crimes and Criminal Procedure. Prior to the enactment of Title 18, the act of May 27, 1930, as amended, had been classified to sections 744a to 744n of Title 18.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43a of this title; title 25 section 450j.

§ 43. Walsh-Healey provisions not applicable to certain contracts

Sections 35 to 45 of this title shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall they apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in said sections shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934 [47 U.S.C. 151 et seq.].

(June 30, 1936, ch. 881, § 9, 49 Stat. 2039.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code see section 609 of Title 47 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43a of this title; title 25 section 450j.

§ 43a. Administrative procedure provisions**(a) Applicability**

Notwithstanding any provision of section 553 of title 5, subchapter II of chapter 5, and chapter 7, of title 5 shall be applicable in the administration of sections 35 to 39 and 41 to 43 of this title.

(b) Wage determination; administrative review

All wage determinations under section 35(a) of this title shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had with-

in ninety days after such determination is made in the manner provided in chapter 7 of title 5 by any person adversely affected or aggrieved thereby, who shall be deemed to include any supplier of materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable.

(c) Judicial review

Notwithstanding the inclusion of any stipulations required by any provision of sections 35 to 45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms “locality” and “open market”.

(June 30, 1936, ch. 881, § 10, as added June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; amended Pub. L. 103-355, title VII, § 7201(2), (3), Oct. 13, 1994, 108 Stat. 3378; Pub. L. 104-106, div. D, title XLIII, § 4321(f)(2), Feb. 10, 1996, 110 Stat. 675.)

CODIFICATION

“Section 553 of title 5”, “subchapter II of chapter 5, and chapter 7, of title 5”, and “chapter 7 of title 5” substituted for “section 1003 of title 5”, “such Act [meaning the Administrative Procedure Act]”, and “section 1009 of title 5”, respectively, on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 10 of act June 30, 1936, was renumbered section 12, and is classified to section 44 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106, § 4321(f)(2)(A), substituted “section 35(a)” for “section 35(b)”.

Subsec. (c). Pub. L. 104-106, § 4321(f)(2)(B), struck out comma after “‘locality’”.

1994—Subsec. (b). Pub. L. 103-355, § 7201(2), substituted “supplier of materials” for “manufacturer of, or regular dealer in, materials”.

Subsec. (c). Pub. L. 103-355, § 7201(3), struck out “‘regular dealer’, ‘manufacturer’,” before “and ‘open market’”.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 450j.

§ 43b. Manufacturers and regular dealers

(a) The Secretary of Labor may prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by any executive department, independent establishment, or other agency or instrumentality of the

United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment.

(b) Any interested person shall have the right of judicial review of any legal question regarding the interpretation of the terms “regular dealer” and “manufacturer”, as defined pursuant to subsection (a) of this section.

(June 30, 1936, ch. 881, § 11, as added Pub. L. 103-355, title VII, § 7201(4), Oct. 13, 1994, 108 Stat. 3378; amended Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(A), Feb. 10, 1996, 110 Stat. 675.)

PRIOR PROVISIONS

A prior section 11 of act June 30, 1936, was renumbered section 12, and is classified to section 44 of this title.

Another prior section 11 of act June 30, 1936, was renumbered section 13, and is classified to section 45 of this title.

AMENDMENTS

1996—Pub. L. 104-106 transferred section in original so as to appear after section 43a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

§ 44. Separability of Walsh-Healey provisions

If any provision of sections 35 to 45 of this title, or the application thereof to any persons or circumstances, is held invalid, the remainder of said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

(June 30, 1936, ch. 881, § 12, formerly § 10, 49 Stat. 2039; renumbered § 11, June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; renumbered § 12, Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(B), Feb. 10, 1996, 110 Stat. 675.)

PRIOR PROVISIONS

A prior section 12 of act June 30, 1936, was renumbered section 13, and is classified to section 45 of this title.

Another prior section 12 of act June 30, 1936, was renumbered section 14, and is set out as a Short Title note under section 35 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 450j.

§ 45. Effective date of Walsh-Healey provisions; exception as to representations with respect to minimum wages

Sections 35 to 45 of this title shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from June 30, 1936: *Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such indus-